REMARKS

The Office Action dated November 25, 2008 has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

Claims 1, 4-9, 12-18, 21-23, 26-32, and 35-38 have been amended to more particularly point out and distinctly claim the subject matter of the invention. Claims 2, 3, 10, 11, 19, 20, 24, 25, 33, and 34 have been cancelled without prejudice and/or disclaimer. No new matter is believed to have been added. Claims 1, 4-9, 12-18, 21-23, 26-32, and 35-38 are currently pending and are respectfully submitted for consideration.

Reconsideration and withdrawal of the objections and rejections is respectfully requested in light of the following remarks.

Claims 6-15 were rejected under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. In particular, the Office Action asserted that the following limitations: "a meter..." recited in claims 6 and 7; "the meter and a public date network for communication of data..." recited in claim 8; "an allocater", "a reallocater configured to reallocate, in the meter...", "...a reserver", "...a setter...", and "a transmitter..." recited in claim 9; "...a transmitter...", "...a report from the meter to the rating device..." recited in claim 12; "...a meter configured to measure..." recited in claim 15; "a processor" recited in claims 14 and 15; and "a reserver" and "a transmitter" are new matter. The terms "meter", "allocater", "reallocater", "reserver", "setter",

"processor", and "transmitter" have been replaced with the proper structural component as supported by the application. For example, claim 6 has been amended to recite "an apparatus, comprising: a measuring device configured to reserve...; set...; send...; allocate...; and reallocate..." to overcome the rejection. Similar amendments have been made to claims 8-15 to overcome the rejection. Support for these amendments are illustrated in Figure 1 of the application. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 1 was rejected under 35 U.S.C. §112, second paragraph, for insufficient antecedent support. In particular, the Office Action asserted that there is insufficient antecedent basis for the limitation "the rating device" in claim 1. Claim 1 has been amended to recite "a rating device". Accordingly, withdrawal of the rejection is respectfully requested.

Claims 9, 14, 15, 30, and 32 were rejected under 35 U.S.C. §112, second paragraph for being indefinite. In particular, the Office Action asserted that claims 9, 14, 15, 30, and 32 merely recites a use without any active, positive steps delimiting how this use is actually practiced. However, Applicants respectfully traverse this rejection as follows.

Contrary to the assertions made in the Office Action, claims 9, 14, 15, 30, and 32 are not directed to method/process claims. Instead these claims are directed to an apparatus. The test for whether the apparatus claim satisfies the requirements under the

second paragraph of 35 U.S.C. § 112 is <u>not</u> determined based on whether the apparatus claim recites active, positive steps delimiting how this use is actually practiced. Such a test only applies when the applicant attempts to claim a process without setting forth any steps involved in that process. <u>See</u> MPEP § 2173.05(q). To apply such a test in reference to claims 9, 14, and 15 would be improper, because claims 9, 14, and 15 are directed to an apparatus claim, and, further, these claims recite both structural components and the functions that define the structural components. Accordingly, Applicant requests that the finality of the rejection be withdrawn, as the test in the Office Action is incorrectly applied to the claims.

Furthermore, claims 30 and 32 are directed to an apparatus claim that recites means-plus-function limitations, and, therefore, these claims invoke the sixth paragraph of 35 U.S.C. § 112. MPEP § 2181 sets forth guidelines for the examination of 35 U.S.C. 112, sixth paragraph, "means or step plus function" limitations in a claim. Therefore, the test (e.g. a claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practice) applied in the Office Action is incorrect. Instead, the Office must apply the standard according to the guidelines set forth in MPEP § 2181(I). A claim limitation will be presumed to invoke 35 U.S.C. 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or "step for;" (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not

be modified by sufficient structure, material, or acts for achieving the specified function. See MPEP § 2181(I).

In the instant case, the limitations in claims 30 and 32 recite "means for" terminology. Secondly, the "means for" terminology is modified by the functional language (e.g. obtaining, sending, allocating, measuring). Lastly, the "means for" terminology is not modified by sufficient structure, material, or acts to achieve the specific function. Claims 30 and 32 not only satisfy the second paragraph of 35 U.S.C. § 112, but also satisfy the sixth paragraph of 35 U.S.C. § 112. Accordingly, Applicant requests that the rejection of claims 9, 14, 15, 30, and 32 be withdrawn for at least the reasons stated above.

Claim 21 was rejected under 35 U.S.C. §112, second paragraph, for being indefinite. In particular, the Office Action asserted whether the claim is directed to a process or system is unclear. However, Applicant respectfully traverses this rejection as follows.

Claim 21 expressly recites "the apparatus...". As such, it would be readily apparent, when construing claim 21, that claim 21 is directed to an apparatus (i.e. machine or article of manufacture). Claim 21 should be construed as being directed to an apparatus. Furthermore, the assertion made in the Office Action that "in order to send a report from the apparatus a method/process [sic] and/or software would need to enable this step to happen, [and] therefore, "a report is sent from the apparatus" as interpreted by

the Office Action as a "method"" is clearly incorrect. See Office Action, page 6, item 17. Just because claim 21 recites "wherein, after all of the reserved resources are used, a report is sent from the apparatus...", it does not necessarily mean that claim 21 is directed to a process. In fact, a person of ordinary skill in the art, when construing claim 21 in its entirety, would clearly understand that claim 21 is not directed to a process, but instead directed to an apparatus claim. Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claims 1-5 were rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. However, Applicant respectfully traverses this rejection as follows.

In particular, the Applicant submits that the basis of the rejection made in the Office Action is incorrect. See Office Action, page 6, item 20. For example, the two-prong test applied in the Office Action does not apply to claims 1-5 in view of the recent decision in *In re Bilski*. According to *In re Bilksi*, there is now only one test; the so-called "machine-or-transformation test." Patent examiners and others who are evaluating whether a particular business method or other process is patentable must ask if the process (1) is tied to a particular machine or apparatus, or (2) transforms a particular article into a different state or thing.

Independent claim 1 satisfies at least the first prong of the test (i.e., tied to a particular machine or apparatus). For example, claim 1 recites, in part, "reserving resources from a prepayment system for prepaid data services..., and sending a

message…<u>from a rating device to a measuring device</u>" (emphasis added). As such, it is readily apparent that claim 1 satisfies the "machine-or-transformation test" set forth in *In re Bilksi*, as claim 1 is tied to a particular machine or apparatus.

Accordingly, Applicant respectfully requests that the rejection of claims 1-5 be withdrawn for at least the reasons stated above.

Claim 1-5 and 23-29 were rejected under 35 U.S.C. § 101 because claims 1-5 and 23-29 allegedly recite purely mental steps. Applicant respectfully traverses the rejection as follows.

As discussed above, the process recited in claim 1 can be construed to be tied to a machine of apparatus as set forth in *In re Bilski* and, therefore, claims 1-5 cannot be said to recite purely mental steps.

Furthermore, claims 23 and 28 have been amended to be tied to a machine, which clearly satisfies the test set forth in *In re Bilski* and, therefore, claims 23-29 cannot be said to recite purely mental steps.

Accordingly, withdrawal of the rejection is respectfully requested.

Claims 1-38 were rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter. In particular, the Office Action asserted that claims 1-38 are directed toward providing information in relation to an electronic communication device via a data signal, and, therefore, is not eligible for patent protection under 35 U.S.C. § 101. Applicant respectfully traverses this rejection as follows.

The assertion made in the Office Action that computer-software must be tangibly embodied on a computer readable medium only applies when the claims are directed to a computer program, a data structure, or the like. However, in all other cases, MPEP § 2106(IV)(B) states, in part, "to properly determine whether a claimed invention complies with the statutory invention requirements of 35 U.S.C. 101, USPTO personnel must first identify whether the claim falls within at least one of the four enumerated categories of patentable subject matter recited in section 101 (i.e., process, machine, manufacture, or composition of matter). In the instant case, claims 1-38 satisfy the requirements under 35 U.S.C. § 101, because claims 1-5 and 23-29 are directed to process (e.g. method) claims and claims 6-22 and 30-36 are directed to at least a machine or a manufacture (e.g. apparatus or system).

Even though claims 37 and 38 recite "a computer program", these claims satisfy the requirements under 35 U.S.C. § 101. MPEP § 2106.01(I) states, in part, "[w]hen functional descriptive material is **recorded** on some computer-readable medium, it becomes structurally and functionally interrelated to the medium **and will be statutory** in most cases since use of technology permits the function of the descriptive material to be realized.". In the instant case, both claims 37 and 38 define a structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, because claims 37 and 38

recite that a computer program is **embodied** (e.g. recorded) on a computer-readable medium. Furthermore, claims 37 and 38 remain statutory irrespective of the fact that a computer program is included in the claim. See MPEP § 2106.01(I).

Accordingly, Applicant respectfully requests that the rejection of claims 1-38 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claims 6, 7, 21, and 26 were rejected under 35 U.S.C. § 101. In particular, the Office Action asserted that the limitation "...rating device configured to obtain information" in claims 6, 7, 21, and 26 is interpreted as software, and, therefore is not eligible for patentable protection. However, this assertion is incorrect and traversed as follows. Nowhere does the claim recite a computer program, a data structure, or the like. As such, it is readily apparent that the USPTO has not met the burden in setting forth a prima facie case establishing why the above-quoted limitation falls outside of the statutory categories. See MPEP § 2106(IV)(B). Upon a proper construction of claims 6, 7, 21, and 26, it would be readily apparent that these claims fall within one of the four statutory categories under the requirements of 35 U.S.C. § 101, and any other type of interpretation to the contrary would be considered incorrect and improper. Similarly, in the § 101 rejections, discussed below, the USPTO has clearly failed to established a prima facie case why the limitations recited in the claims fall outside of the statutory categories. Without a proper showing, the Office Action would be deemed improper.

Accordingly, Applicant respectfully requests that the rejection of claims 6, 7, 21, and 26 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claims 6 and 7 were rejected under 35 U.S.C. § 101. In particular, the Office Action asserted that the limitation "...a meter configured to allocate..." is interpreted as software, and, therefore not eligible for patent protection. However, this rejection is respectfully traversed as follows. Claims 6 and 7 are directed to system claims. Furthermore, these claims recite a structural component (e.g. a measuring device) and the function (e.g. allocate proportional data delivery limits) that define the structural components and, therefore, claims 6 and 7 cannot be reasonably construed as being directed to software.

Accordingly, Applicant respectfully requests that the rejection of claims 6 and 7 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claim 9 was rejected under 35 U.S.C. § 101. In particular, the Office Action asserted that the limitations "a reallocator configured to reallocate", "a reserver configured to reserve...", "a setter configured to set...", "a transmitter configured to send...", "an allocater configured to allocate..." in claim 9 are interpreted as software, and, therefore not eligible for patent protection.

However, claim 9, as amended recites "a measuring device configured to reserve..., set..., send..., allocate..., and reallocate...". As such, it is clear that claim 9 cannot be directed to software, since claim 9 recites a structural component (e.g. a

measuring device) and the function (e.g. send, allocation, etc.) that defines the structural component.

Accordingly, Applicant respectfully requests that the rejection of claim 9 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claim 10, 11, and 13 were rejected under 35 U.S.C. § 101 because the claimed limitation "...a definer configured to define..." is interpreted as being software *per se*. However, this rejection is respectfully traversed as follows.

Applicant submits that the interpretation made in the Office Action is incorrect, because claims 10, 11, and 13 recite "wherein the measuring device is further configure to define...", which is clearly eligible for patent protection. Claims 10, 11, and 13 all recite structural component (e.g. the measuring device) and the function (e.g. to define) that defines the structural component of the apparatus.

Accordingly, Applicant respectfully requests that the rejection of claims 10, 11, and 13 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claims 14 and 15 were rejected under 35 U.S.C. § 101 because the claimed limitation "...a reserver configured to reserver..." is interpreted as being software. However, this rejection is respectfully traversed as follows. Applicant submits that the interpretation made in the Office Action is incorrect, because claim 14, as amended, recites "a rating device configured to reserve..., obtain..., and send..." and claim 15, as amended, recites "a measuring device configured to allocated..., and measure...". As

such, it is readily apparent that the structural component recited in the apparatus in claims 14 and 15 and the functions that define the structural component of the apparatus cannot be interpreted as software.

Accordingly, Applicant respectfully requests that the rejection of claims 14 and 15 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claims 9, 14, 15, 30, and 32 were rejected under 35 U.S.C. § 101 because the recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process. However, this rejection is respectfully traversed as follows. Applicant submits that the assertion made in the Office Action is clearly incorrect. In particular, it is clear that claims 9, 14, 15, 30, and 32 are directed to an apparatus claim, which does not constitute a process claim. Furthermore, these claims clearly recite some type of structural component. The structural components are not reciting the use, but instead reciting the functions that define the structural components. As such, it is readily apparent that claims 9, 14, 15, 30, and 32 satisfy the requirements of 35 U.S.C. § 101.

Accordingly, Applicant respectfully requests that the rejection of claims 9, 14, 15, 30, and 32 under 35 U.S.C. § 101 be withdrawn for at least the reasons stated above.

Claims 1-5 and 28 were rejected under 35 U.S.C. § 102(a) as being anticipated by Francis et al. ("Design Issues for Prepaid Data Service"). The Office Action asserted that

Francis, *et al.* discloses all of the elements recited in claims 1-5 and 28. However, this rejection is respectfully traversed as follows.

Claim 1, upon which claims 4-5 are dependent, recites a method. The method includes reserving resources from a prepayment system for prepaid data services. The prepaid data services being divided into at least two service groups of different charging criteria in a network. An initial data delivery limit is set for each service group based on the resources and information about the charging criteria. The method includes sending a message containing information about the initial data delivery limits from a rating device to a measuring device. A proportional data delivery limit is allocated for each service group individually and the proportional data delivery limit for each service group is defined as a proportion of the initial data delivery limit for the respective service group. Remaining resources to the service groups are reallocated based on a pricing weight of each of the service groups, each pricing weight being defined for the respective service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group, to obtain a new proportional data delivery limit for each service group individually. The new proportional data delivery limits being for use in delivery of data after a service group has exceeded its proportional data delivery limit.

Claim 28, upon which claim 29 is dependent, recites a method. The method includes reserving, in the rating device, resources from a prepayment system. The method includes receiving, in the rating device, information of charging criteria of

service groups of prepaid data services, the charging criteria for each service group being different. The method includes setting an initial data delivery limits for each of the service groups based on the received information and the reserved resources. The method includes sending, in the rating device, a message containing information about each of the initial data deliver limits to a measuring device to enable a proportional data delivery limit to be defined for each service group as a proportion of an initial data delivery limit for the service group and to enable remaining free resources to be reallocated to the service groups based on a pricing weight of each of the data service groups. The pricing weight for each data service group is defined as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group.

For reasons similar to those discussed below with respect to claim 15, Applicant respectfully submits that Francis et al. does not disclose, either expressly or implicitly, all of the elements of claims 1 and 28. Therefore, Applicants respectfully request that the rejection of independent claims 1 and 28 be withdrawn and this claim be allowed for at least the reasons presented below with respect to claim 15.

Because claims 4-5 depend upon claim 1, Applicants respectfully submit that claims 4-5 inherit the patentable features thereof. Accordingly, Applicants respectfully request that the rejection of dependent claims 4-5 be withdrawn for at least the same reason as base claim 1, and for the specific limitation recited therein.

Claims 6-27 and 29-38 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Francis et al. in view of Tubinis (U.S. Patent Publication No. 2003/0014367). Particularly, the Office Action asserted that the combination of Francis et al. and Tubinis disclosed all of the elements of claims 6-27. However, this assertion by the Office Action is respectfully traversed as followed.

Claim 6 recites a system. The system includes a prepayment system hosting prepaid resources. The system includes a rating device configured to receive information of the prepaid resources and of charging criteria of service groups and to set initial data delivery limits for the service groups based on the received information The system includes a measuring device configured to allocate a proportional data delivery limit for each service group individually. Each proportional data delivery limit is defined as a proportion of the initial data delivery limit for the respective service group, to measure use of each of the service groups. The measuring device is configured to reallocate remaining free resources to the service groups based on a pricing weight of each of the service groups. Each pricing weight being defined for the respective service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group. Obtain a new proportional data delivery limit for each service group individually for delivery of data when a one of the service groups exceeds its proportional data delivery limit.

Claim 7, upon which claim 8 is dependent, recites a system. The system includes at least one data communication network. The system includes a prepayment system hosting prepaid resources. The system includes a rating device configured to receive information of the prepaid resources and of charging criteria of service groups and to set an initial data delivery limits for each of the service groups based on the received information. The system includes a measuring device configured to allocate a proportional data delivery limit for each service group individually. Each proportional data delivery limit is defined as a proportion of the initial data delivery limit of the respective service group, The measuring device is configured to measure use of each of the service groups, and to reallocate remaining free resources to the service groups. The remaining free resources are reallocated based on a pricing weights of each of the service groups. The pricing weight being defined for each service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group. Obtain a new proportional data delivery limit for each service group individually for delivery of data when a one of the service groups exceeds its proportional data delivery limit.

Claim 9, upon which claims 12-13 are dependent, recites an apparatus. The apparatus includes a rating device configured to reserve resources from a prepayment system for prepaid data services. The prepaid data services being divided into at least two service groups of different charging criteria in a network. The rating device

configured to set an initial data delivery limit for each service group based on the resources and information about the charging criteria. The rating device configured to send a message containing information about the initial data delivery limits from the rating device to a measuring device. The apparatus includes a measuring device configured to allocate, in the measuring device, a proportional data delivery limit for each service group individually as a proportion of the initial data delivery limit for the respective service group. The measuring device is configured to define, in the measuring device, a pricing weight for each service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective service group. The measuring device is configured to reallocate, in the measuring device, remaining resources to the service groups based on a pricing weight of each of the service groups to obtain a new proportional data delivery limit for each service group individually. The new proportional data delivery limits being for use in delivery of data after a one of the service groups has exceeded its proportional data delivery limit.

Claim 14, upon which claims 16-18 are dependent, recites an apparatus. The apparatus includes a rating device configured to reserve resources from a prepayment system. The rating device is further configured to receive information of charging criteria of at least two service groups of prepaid data services, the charging criteria for each service group being different. The rating device is further configured to set an initial data delivery limit for each service group based on the received information and

the reserved resources. The rating device is further configured to send a message containing information about the initial data deliver limits to a measuring device to enable a proportional data delivery limit to be defined for each service group as a proportion of an initial data delivery limit for the service group. The rating device is further configured to send a message containing information about the initial data deliver limits to a measuring device to enable remaining free resources to be reallocated to the service groups based on a pricing weight of each of the data service groups. The pricing weight for each data service group is defined as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group.

Claim 15, upon which claims 21-22 are dependent, recites an apparatus. The apparatus includes a measuring device configured to define and allocate a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the data service group. The measuring device is configured to measure use of each of the data service groups. The measuring device is configured to define a pricing weight for each data service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group. The measuring device is configured to reallocate remaining free resources to the service groups based on the pricing weights of the service groups to obtain new proportional data delivery limits for each data service

group individually for delivery of data when a one of the data service groups exceeds its proportional data delivery limit.

Claim 23, upon which claims 26-27 are dependent, recites a method. The method includes, in a measuring device, defining and allocating a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the service group. The method includes measuring, in the measuring device, use of each of the service groups. The method includes defining a price weight for each service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group. The method includes reallocating, in the measuring device, remaining free resources to the service groups based on the pricing weight of each of the service groups to obtain a new proportional data delivery limit for each service group individually for delivery of data when a one of the service groups exceeds its proportional data delivery limit.

Claim 30, upon which claim 31 is dependent, recites an apparatus. The apparatus includes a reserving means for reserving resources from a prepayment system. The apparatus includes a processing means for receiving information of charging criteria of service groups of prepaid data services. The charging criteria for each service group being different. The processing means includes setting an initial data delivery limit for each of the service groups based on the received information and the reserved resources. The apparatus includes a transmitting means for sending a message containing

information about each of the initial data deliver limits to a measuring device to enable a proportional data delivery limit to be defined for each service group as a proportion of an initial data delivery limit for the service group. The message contains information about each of the initial data deliver limits to enable remaining free resources to be reallocated to the service groups based on a pricing weight of each of the data service groups. The pricing weight for each data service group is defined as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group.

Claim 32, upon which claims 35-36 are dependent, recites an apparatus. The apparatus include a processor means for defining and allocating a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the service group. The processing means includes defining a price weight for each service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group. The apparatus includes a measuring means for measuring use of each of the service groups. The processing means is further for reallocating remaining free resources to the service groups based on a pricing weight of each of the service groups, to obtain a new proportional data delivery limit for each service group individually for delivery of data when a one of the service groups exceeds its proportional data delivery limit.

Claim 37 recites a computer program embodied on a computer-readable medium configured to control a processor to perform defining and allocating a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the service group. The computer program embodied on a computer-readable medium configured to control a processor to perform measuring use of each of the service groups. The computer program embodied on a computer-readable medium configured to control a processor to perform defining a price weight for each service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the service group. The computer program embodied on a computer-readable medium configured to control a processor to perform reallocating remaining free resources to the service groups based on the pricing weight of each of the service groups to obtain a new proportional data delivery limit for each service group individually for delivery of data when a one of the service groups exceeds its proportional data delivery limit.

Claim 38 recites a computer program embodied on a computer-readable medium configured to control a processor to perform reserving resources from a prepayment system. The computer program embodied on a computer-readable medium configured to control a processor to perform receiving information of charging criteria of service groups of prepaid data services. The charging criteria for each service group being different. The computer program embodied on a computer-readable medium configured

to control a processor to perform setting an initial data delivery limit for each of the service groups based on the received information and the reserved resources. The computer program embodied on a computer-readable medium configured to control a processor to perform sending a message containing information about each of the initial data deliver limits to a measuring device to enable a proportional data delivery limit to be defined for each service group as a proportion of an initial data delivery limit for the service group. message contains information about each of the initial data deliver limits to enable remaining free resources to be reallocated to the service groups based on a pricing weight of each of the data service groups. The pricing weight for each data service group is defined as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group.

As will be discussed below, Applicants respectfully submit that the combination of Francis et al. and Tubinis fails to disclose, either expressly or implicitly, all of the elements of the claims, and therefore fails to provide the advantages and features as discussed above.

Francis et al. generally discusses prepaid voice services and, in particular, discusses design issues for a protocol between a prepaid application and the data network element. See Francis et al., Abstract. According to Francis et al., the prepaid usage point (PUP) can be configured with differential rating information for one or more of the four differential accounting types under usage scenario U7. See Francis et al., page 10, AC03.

In particular, one way the PUP in Francis et al. is configured is by the prepare application server (PAS) conveying multiple quotas, one quota for each type of differential accounting. See Francis et al., page 10, AC03.1.

However, neither the PUP nor the PAS in Francis et al. constitute the measuring device of claim 15, as neither the PUP nor the PAS in Francis et al. are configured to "define and allocate a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the data service group", as recited in claim 15.

In addition, page 4 of Francis et al. discusses that the prepaid application database (PPDB) stores the account balance for the user as well as which quotas have been allocated. In particular, page 4 of Francis et al. discusses that a usage session is the usage extended over a period of time, during which the PAS allocates quotas. Therefore, it is readily apparent that neither the PPDB, the PUS, nor the PAS are configured to "define...a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the data service group", as recited in claim 15.

Francis et al. also fails to disclose, either expressly or implicitly, at least, "reallocate remaining free resources to the service groups based on the pricing weights of the service groups", as recited in claim 15. Instead, page 13 of Francis et al. discusses a PAS shrinking the size of an already allocated quota. For example, in order to give 50

minutes to the voice PUP, 50 megabytes is allocated to a data session. However, when the voice call reaches 50 minutes, the PAS could take 25 megabytes away from the data PUP and give another 25 minutes to the voice PUP. Therefore, Francis et al. does not suggest reallocation "based on the pricing weights of the service groups", as recited in claim 15.

In fact, Francis et al. is silent as to "a pricing weight [being defined] for each data service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group", as recited in claim 15. This is not surprising, as the PAS of Francis et al. is merely concerned with shrinking.

Claim 15 further recites that the measuring device is configured "to obtain new proportional data delivery limits for each data service group individually for delivery of data when a one of the data service groups exceeds its proportional data delivery limit", as recited in claim 15. However, because the PAS in Francis et al. does not correspond to the measuring device recited in claim 15, the PAS in Francis et al. cannot "obtain new proportional data delivery limits for each data service group individually for delivery of data when a one of the data service groups exceeds its proportional data delivery limit", as recited in claim 15.

Applicant respectfully submits that nothing was found or cited in Tubinis to cure the deficiencies of Francis et al., as discussed above with respect to claim 15, for at least the following reasons.

Tubinis generally discusses topping up a subscriber's account for a multimedia service on a communications network while the service is being provided. According to Tubinis, a prepaid urgent processor 118, which has an internal meter which measures the duration for which a call is in progress or the volume of information units that flows to a transport path during a call. See Tubinis, paragraph [0014]. A computer 120 rates the cost of making a call and determines based on the cost and a prepaid amount, the number of minutes or volume of information that are available for use before a prepaid threshold is reached. See *Id*.

However, nothing was found in Tubinis to disclose, either expressly or implicitly, at least, the following:

> define and allocate a proportional data delivery limit for each of at least two data service groups of different charging criteria as a proportion of an initial data delivery limit for the data service group;
>
> measure use of each of the data service groups;
>
> define a pricing weight for each data service group as a proportion of a sum of the proportional data delivery limits to the initial data delivery limit of the respective data service group; and
>
> reallocate remaining free resources to the service groups based on the pricing weights of the service groups to obtain new proportional data delivery limits for each data service group individually for delivery of data when a one of the data service groups exceeds its proportional data delivery limit.

as recited in claim 15.

Therefore, Applicant respectfully requests that the rejection of independent claim 15 be withdrawn for at least the reasons presented above.

Independent claims 6, 7, 9, 14, 15, 23, 30, 32, 37 and 38, which each have their own scope, recites features similar to those recited in claim 15. Therefore, Applicant respectfully requests that the rejection of independent claims 6, 7, 9, 14, 15, 23, 30, 32, 37 and 38 be withdrawn for reasons similar to those discussed above with respect to claim 15.

Applicant respectfully requests that the rejection of dependent claims withdrawn for at least the same and/or similar reasons as their respective base claims, from which they depend upon, and for the specific limitations recited therein.

For at least the reasons discussed above, Applicants respectfully submit that none of the cited references, whether considered alone or in combination, disclose, either expressly, implicitly or inherently, all of the elements of the claimed invention. These distinctions are more than sufficient to render the claimed invention unanticipated and unobvious. It is therefore respectfully requested that all of claims 1, 4-9, 12-18, 21-23, 26-32, and 35-38 be allowed, and this application passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicant's undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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